IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.358 of 1992

Date of decision : August 22, 2007

State of H.P. **…Appellant.**

Versus

Ramesh Kumar **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondent : Mr. Neeraj Sharma, Advocate.

Surjit Singh, Judge(Oral)

Respondent was sent up for trial for an offence punishable under Section 376 of the Indian Penal Code for allegedly raping a female child aged about 5 years.

2. Prosecution story, as per record, may be summed up thus. The parents of the child (prosecutrix) used to reside as tenants in the house of one Balbir Singh. Respondent had his house in the neighbuorhood of the parents of the prosecutrix. Children of the respondent used to play with the prosecutrix and her siblings. After that the parents of the prosecutrix shifted to some other place in the same town.

3. On the fateful day when the prosecutrix and her elder sister named Meera, aged about 7 years, were playing near the new tenement of their parents, respondent allegedly took away the

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Whether reporters of the local papers may be allowed to see the judgment?

prosecutrix to his house and committed rape on her. When the prosecutrix did not return home till very late in the evening, her mother was informed by the elder sister of the prosecutrix that the respondent had taken away the prosecutrix towards his house. The prosecutrix was seen coming from the side of the house of respondent around 9 in the night. She had blood stains on her frock. She informed her mother that the respondent, whom she called uncle, had subjected her to wrongful act. Father of the prosecutrix was not at home that night. He returned home the next evening. He went to the police station and lodged the report. Police investigated the case. Prosecutrix was got medically examined. Doctor noticed tenderness of labia majora and rupture of hymen and gave the opinion that the prosecutrix had been subjected to sexual intercourse.

4. Trial Court charged the respondent with the offence under Section 376 IPC and put him on trial, when he pleaded not guilty. Finally, the trial Court acquitted him.

5. We have heard the learned Additional Advocate General and gone through the record. The prosecution did not examine the prosecutrix because of her being a small child. It also did not examine the elder sister of the prosecutrix, who at the time of the commission of the crime, was seven years of age. The parents of the prosecutrix were examined and both of them turned hostile. The mother of the prosecutrix denied that she was informed by her elder daughter that the prosecutrix had been taken away by the respondent. Instead she stated that she was informed that the prosecutrix had been taken away by some unknown person towards the PWD rest house and that she was seen coming around 9 in the night from the side of the said rest house. No other evidence was led by the prosecution.

6. In view of the above stated position, we see no merit in the appeal. The same is, therefore, dismissed.

(Surjit Singh), J

August 22, 2007(ss) **(Surinder Singh), J**